

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of)	Case No.: 13-O-11078-YDR
)	
MICHAELANNE CAHILL,)	
)	DECISION AND ORDER OF
Member No. 208893,)	INVOLUNTARY INACTIVE
)	ENROLLMENT
<u>A Member of the State Bar.</u>)	

Respondent MichaelAnne Cahill (“Respondent”), was charged with (1) failing to perform legal services with competence; (2) failing to respond promptly to client inquiries; (3) failing to refund unearned fees; and (4) failing to update membership records address. She failed to file a response to the notice of disciplinary charges (NDC), and her default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that, if an attorney’s default is entered for failing to respond to the NDC and the attorney fails to have

¹ Unless otherwise indicated, all references to rules are to the Rules of Procedure of the State Bar which were in effect prior to July 1, 2014. Among other amendments, the default rules were amended effective July 1, 2014. However, as Respondent’s default was entered prior to July 1, 2014, the rules which were in effect prior to July 1, 2014, are the operative rules in this matter.

the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on December 1, 2000 and has been a member of the State Bar of California since.

Procedural Requirements Have Been Satisfied

On October 16, 2013, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested to her membership records address. The NDC notified Respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The correspondence was returned as undeliverable. A courtesy copy was also sent to Respondent's official membership records address (official address) by first-class mail. It was not returned as undeliverable.

Respondent did not file a response to the NDC by November 12, 2013. However, the State Bar had made efforts to locate and contact Respondent, including (1) unsuccessful online searches, email to Respondent's membership records email address and telephone calls to possible employers or business associates; (2) calling Directory Assistance for the area that included respondent's official address on March 20, 2013 but, no listings for her were available other than those at which the State Bar had already attempted to reach her; (3) visiting Respondent's official address and address believed to be her residence in April 2013.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

Respondent no longer had an office at her official address and had moved from what was believed to be her residence; (4) subpoenaing the lease of her official address and having a telephone conversation with the leasing agent in May 2013. The agent indicated that Respondent had vacated the premises in December 2012 and that no mail had been received for Respondent; and (5) calling Respondent's membership records telephone number. The telephone rang but there was no response and no messages were allowed.

On December 6, 2013, the State Bar filed and properly served on Respondent a motion for entry of her default by certified mail, return receipt requested to Respondent's membership records address. The motion complied with the requirements for a default, including supporting declarations of reasonable diligence regarding the additional steps taken to provide notice to Respondent. (Rule 5.80.) The motion also notified Respondent that, if she did not timely move to set aside her default, the court would recommend her disbarment. Respondent did not file a response to the motion, and her default was entered on January 6, 2014. The order entering the default was served on Respondent at her membership records address by certified mail, return receipt requested.³ The court also ordered Respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order. The order was returned by the U.S. Postal Service as undeliverable.

Respondent did not seek to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On August 21, 2014, the State Bar

³ The January 6, 2014 declaration of service of the order entering default erroneously stated that the order was served on Respondent by first-class mail. However, the envelope in which this correspondence was returned to the State Bar Court, bears the necessary documents for delivery by certified mail, return receipt requested. Accordingly, the order was properly served on January 6, 2014 by certified mail, return receipt requested. On November 13, 2014, an amended declaration of service regarding this document was filed and served on the parties accurately reflecting the correct method of service on January 6, 2014.

filed and properly served a petition for disbarment on Respondent by certified mail, return receipt requested. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has not had contact with Respondent since the default was entered; (2) there are no other disciplinary matters pending against Respondent; (3) Respondent has no prior record of discipline; and (4) the Client Security Fund (CSF) has not made any payments resulting from Respondent's conduct as set forth in the NDC. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on September 16, 2014.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of a respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable of the rule and statutory violations as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

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Count One alleges Respondent's willful violation of rule 3-110(A) of the State Bar Rules of Professional Conduct (failing to perform legal services with competence) "by performing no legal services of value on behalf of the client." Rule 3-110(A) does not require that an attorney provide legal services of value and such value is immaterial in determining whether an attorney has intentionally, recklessly or repeatedly failed to perform legal services competently in willful violation of this rule. Count One is DISMISSED with prejudice as no violation of rule 3-110(A) is shown.

Count Two alleges Respondent willfully violated section 6068, subdivision (m) (failing to respond to client inquiries) by not responding promptly to approximately 10 reasonable status

inquiries made by her client between August 7, 2012 and January 26, 2013, which Respondent received regarding a matter in which he had agreed to provide legal services.

Count Three alleges Respondent's willful violation of rule 3-700(D)(2) of the State Bar Rules of Professional Conduct by failing to refund \$5,000 in unearned fees to a client, averring that respondent "performed no services of value on the client's behalf and therefore earned none of the advanced fees paid." The NDC's statements that that Respondent's services were of no value and, therefore, the fees were unearned, are assertions of opinion, not factual allegations that can be deemed admitted. Moreover, similarly, as set forth regarding Count One, lack of value is irrelevant in determining whether an advanced fee was unearned for purposes of this rule. Accordingly, since no violation was shown, this count is DISMISSED with prejudice.

Count Four alleges Respondent willfully violated section 6068, subdivision (j) (failing to update membership records address) by failing to notify the State Bar of the change in her address within 30 days after vacating her office at her State Bar membership records address on January 1, 2012.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and Respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on Respondent under rule 5.25;
- (2) reasonable diligence was used to locate and notify Respondent of the proceedings prior to the entry of her default, including unsuccessful online searches; email to Respondent's membership records email address; telephone calls to possible employers or business associates and Directory Assistance for the area that included Respondent's official address; visiting Respondent's official address and address believed to be her residence; subpoenaing the lease of her official address and speaking with the leasing agent. The agent indicated that Respondent

had vacated the premises in December 2012 and that no mail had been received for Respondent; and calling Respondent's membership records telephone number, which rang and did not allow messages to be left;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that Respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, Respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that Respondent MichaelAnne Cahill be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that MichaelAnne Cahill, State Bar number 208893, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: December 2, 2014

YVETTE D. ROLAND
Judge of the State Bar Court